IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11199 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ALIBHAI AMRAM GADAWALA &3 - Petitioner(s)

Versus

AEMADUL HASAN SAIYED &2 - Respondent(s)

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Appearance :

MR MTM HAKIMfor Petitioner No(s).: 1,
2 - 2,3 - 3,3 - 3,4.
-for Petitioner No(s).: 0.

DS AFF.NOT FILED (R) for Respondent No(s).: 1,3.
MR BS PATEL for Respondent No(s).: 2.

MRS RANJAN B PATEL for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 07/07/2005

ORAL JUDGMENT

1.By filing instant petition under Articles 226 and 227 of the Constitution of India, petitioners seek to challenge the order dated 6.5.2003 recorded below application exh.12 in Regular Civil Suit No. 1122 of 2001 by the learned Joint Civil Judge (SD), Baroda, by which the application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in the Suit, came to be rejected.

2.The petitioners filed Regular Civil Suit No. 1122 of 2001 seeking declaration and injunction against the respondent/defendant inter alia contending that the respondent may not create or cause any construction or hindrance on the 6 mt. TP Road under TP Scheme No.23.

3.Along with the Suit the petitioners have also moved application exh.5 claiming interim injunction to the effect that the respondent may not create or cause any construction on the TP Road during the pendency of the Suit. The learned trial Judge issued summons as well as notice in the Suit and the application exh.5 respectively. The petitioners, at the time of filing of the Suit also filed an application seeking order for preparing the panchnama through Court Commissioner. The Court Commissioner made a panchama and in that panchnama it was revealed that the construction was going on and the respondent had constructed the compound wall on the disputed land. On seeing the panchmama petitioner moved application exh.12 seeking amendment in the Suit, which came to be rejected, which has given rise to the present petition.

4.Having heard Mr. M.T.M.Hakim, learned advocate of the petitioners and Mr. B.S.Patel, learned advocate of respondent No.2, on perusal of the impugned order and the panchmana prepared by the Court Commissioner of the lower Court and, on the facts and in the circumstances emerging from the record of the case, according to this Court the nature of the Suit will not be changed by the proposed amendment, therefore, according to this Court the observation made by the learned trial Judge that, by the proposed amendment nature of the Suit would be changed, does not stand to scrutiny. Therefore, the proposed amendment is deserve to be allowed by allowing this petition.

5.For the foregoing reasons, petition succeeds and accordingly it is allowed with no order as to costs. The order dated 6.5.2003 recorded

below application exh.12 in Regular Civil Suit No. 1122 of 2001 rejecting the application filed by the petitioner, is hereby quashed and set aside, the result of which is that the application exh.12 moved by the petitioner is allowed. Petitioner is permitted to carry out the amendment in the plaint as per the proposed amendment, within a period of 14 days from the date of receipt of the writ of this Court by the trial Court, and thereafter it would be open for the respondent to file additional written statement against the proposed amendment. Rule is made absolute accordingly.

(A.M.Kapadia,J)

Jayanti*